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ARTICLE 6

RELATING TO THE RHODE ISLAND PUBLIC RAIL CORPORATION

SECTION 1. *Rhode Island Public Rail Corporation*. Section 4 of Article 6 of Chapter 023 of the 2010 Public Laws is hereby amended to read as follows:

WHEREAS, The State of Rhode Island and Providence Plantations (the "state") has delegated to the Rhode Island department of transportation (the "department") the responsibility for ~~maintaining and constructing highways, roads, freeways, bridges and incidental structures~~ preparing project plans and implementation programs for transportation and for maintaining an adequate level of rail passenger and freight services as established by chapter 8 of title 24, chapter 5 of title 37 and chapter 13 of title 42 of the Rhode Island general laws; and

WHEREAS, The National Railroad Passenger Corporation ("Amtrak") owns the railroad right-of-way along the Northeast Corridor throughout the state; and

WHEREAS, The department seeks to enhance commuter rail service north from the Amtrak Providence Station in Providence, Rhode Island with stops at the proposed Pawtucket/Central Falls Station (the "Pawtucket/Central Falls Station") (together with other commuter rail service in the State, the "Commuter Rail Service"); and

WHEREAS, Amtrak requires the department to provide certain risk-management and financial assurances and indemnification covenants and obligations as a condition precedent to that certain Access Agreement (the "Access Agreement"), entered into by and between the department and Amtrak, that certain Assignment and Assumption Agreement entered into or to be entered into for the benefit of Amtrak by and between the department and the Rhode Island Public Rail Corporation ("Rail Corp"), a public instrumentality of the state established by section 42-64.2 et seq. of the general laws of Rhode Island (the "Act"), that certain Master Force Account Agreement for improvements in the area of the Pawtucket/Central Falls Station entered into or to be entered into by and among Amtrak, the department and Rail Corp, that certain Temporary Easement Agreement entered into or to be entered into by and among Amtrak, the department and Rail Corp, that certain Permanent Easement Agreement entered into or to be entered into by and among Amtrak, the department and Rail Corp and that certain Lease Agreement entered into or to be entered into by and among Amtrak, the department and Rail Corp relating to the Pawtucket/Central Falls Station (collectively, the "Commuter Rail Service Agreements"); and

1 WHEREAS, The above-referenced assurances and indemnification covenants and
2 obligations include, without limitation, that:

3 (1) The department secure and maintain a liability insurance policy covering the liability of
4 the state and Amtrak for property damage, personal injury, bodily injury and death arising out of
5 the Commuter Rail Service, with policy limits of two hundred ninety-five million United States
6 dollars (\$295,000,000), naming the department, Rail Corp, Amtrak and Massachusetts Bay
7 Transportation Authority (the "MBTA") as primary insureds, all subject to a self-insurance
8 retention of up to seven million five hundred thousand United States dollars (\$7,500,000) (the
9 "Retention");

10 (2) The department defend, indemnify and save harmless Amtrak and third parties to the
11 extent that Amtrak is obligated to defend, indemnify or save harmless such third parties,
12 irrespective of negligence or fault of Amtrak or such third parties, for all damage or liability for
13 personal injury or property damage which would not have occurred or would not have been incurred
14 but for the existence of the Commuter Rail Service or the presence on the Northeast Properties (as
15 such term is defined in the Access Agreement) of any trains, passengers, employees, contractors,
16 or invitees of the state or the state's designated operator;

17 (3) Rail Corp defend, indemnify and save harmless Amtrak and third parties to the extent
18 that Amtrak is obligated to defend, indemnify or save harmless such third parties, irrespective of
19 negligence or fault of Amtrak or such third parties, for all damage or liability for personal injury or
20 property damage which would not have occurred but for the improvements undertaken pursuant to
21 the Master Force Account Agreement, the Temporary Easement Agreements and Permanent
22 Easement Agreement with respect to the Pawtucket/Central Falls Station; and

23 (4) The department defend, indemnify and save harmless the MBTA for all damage or
24 liability for personal injury or property damages which would not have occurred or would not have
25 been incurred but for the MBTA's activities as the designated operator under the Access Agreement
26 except for damages or liability attributable directly to the MBTA's own negligence or misconduct;
27 and

28 WHEREAS, In connection with certain existing agreements between the department and
29 Amtrak, the state has agreed from time to time to indemnify Amtrak and third-parties to the extent
30 that Amtrak is required to indemnify third-parties (the "prior indemnities"); and

31 WHEREAS, In connection with future agreements relating to the construction or
32 reconstruction ~~to roads and bridges~~ of the Pawtucket/Central Falls Station described above, the
33 state and the department will be required to provide similar indemnities to Amtrak and third-parties
34 to the extent that Amtrak is required to indemnify third-parties ("future indemnities"); and

1 WHEREAS, The ~~State~~ state and the department may be themselves constitutionally
2 prohibited from providing such prior indemnities and future indemnities, which may negatively
3 impact commuter transit in Rhode Island, and the department therefore has designated the ~~Rhode~~
4 ~~Island Public Rail Corporation ("Rail Corp"), a public instrumentality of the state established by~~
5 ~~chapter 42-64.2 et seq. of the general laws of Rhode Island (the "act")~~ Rail Corp as the responsible
6 party for providing Amtrak with such indemnities; and

7 WHEREAS, Pursuant to the ~~act~~ Act, Rail Corp is authorized, created and established for
8 the purpose of enhancing and preserving the viability of commuter transit and railroad freight
9 operations in Rhode Island and has the power to make contracts and guarantees and incur liabilities,
10 borrow money at any rates of interest that it may determine, and to make and execute any other
11 contracts and instruments necessary or convenient in the exercise of the powers, purposes and
12 functions of the act; and

13 WHEREAS, In connection with ~~the extension of commuter rail service~~ Commuter Rail
14 Service from Providence, Rhode Island to North Kingstown, Rhode Island, as provided in the South
15 County Commuter Rail Service Agreements, described in article 17, section 8 of chapter 68 of the
16 public laws of 2009, and in article 6, section 4 of chapter 23 of the public laws of 2010, Rail Corp
17 has been designated as the entity responsible for securing and maintaining a liability insurance
18 policy to provide funds to pay all or a portion of the liabilities of the state and Amtrak for property
19 damage, personal injury, bodily injury and death arising out of the ~~South County~~ Commuter Rail
20 Service (the "~~South County~~ Commuter Rail Service insurance policy"), with policy limits of two
21 hundred million United States dollars (\$200,000,000), subject to a self-insured retention of seven
22 million five hundred thousand United States dollars (\$7,500,000) (the "retention"); and

23 WHEREAS, Under article 17, section 8 of chapter 68 of the public laws of 2009, under
24 article 6, section 4 of chapter 23 of the public laws of 2010 and pursuant to chapter 18 of title 35
25 of the Rhode Island general laws, the general assembly authorized Rail Corp to secure and maintain
26 a line or evergreen letter of credit in the amount of seven million five hundred thousand United
27 States dollars (\$7,500,000) issued by a bank authorized to do business in Rhode Island with a
28 surplus of not less than one hundred million United States dollars (\$100,000,000) in favor of
29 Amtrak to secure Rail Corp's performance of indemnities under the ~~South County~~ Commuter Rail
30 Service Agreements, and specifically the payment of any amounts arising from time to time under
31 the retention, and for the payment of any costs and fees reasonably incurred in connection with
32 securing and maintaining such line or evergreen letter of credit; and

33 WHEREAS, Amtrak has agreed to accept a liability insurance policy with limits of ~~two~~
34 ~~hundred million~~ two hundred ninety-five million United States dollars ~~(\$200,000,000)~~

1 [\(\\$295,000,000\)](#), towards liabilities and a line or evergreen letter of credit established in the amount
2 of up to seven million five hundred thousand United States dollars (\$7,500,000) issued by a bank
3 authorized to do business in Rhode Island with a surplus of not less than one hundred million United
4 States dollars (\$100,000,000) in favor of Amtrak to secure the prior indemnities and the future
5 indemnities or, in the alternative, to accept expansion of the scope of Rail Corp's ~~South County~~
6 Commuter Rail Service insurance policy and line or evergreen letter of credit to include the prior
7 indemnities and the future indemnities; and

8 WHEREAS, The department further covenants and affirms on behalf of the state to support
9 Rail Corp and to include such financial support in the governor's printed budget submitted to the
10 general assembly each year; and

11 WHEREAS, The requirements undertaken by the department on behalf of the state and
12 Rail Corp as outlined herein to provide the prior indemnities and the future indemnities, and the
13 approval and authority for Rail Corp to obtain and maintain a line or evergreen letter of credit to
14 secure the prior indemnities and the future indemnities or to amend the line or evergreen letter of
15 credit relating to the ~~South County~~ Commuter Rail Service ~~Indemnities~~ [Agreements](#) to secure the
16 prior indemnities and the future indemnities are subject to chapter 18 of title 35 of the Rhode Island
17 general laws; and

18 WHEREAS, Pursuant to sections 35-18-3 and 35-18-4 of the Rhode Island general laws,
19 Rail Corp has requested the approval and authority of the general assembly to provide for the prior
20 indemnities and the future indemnities, which may include securing and maintaining a new
21 insurance policy and line or letter of credit to secure the prior indemnities and future indemnities,
22 or in the alternative, to amend or replace the ~~South County~~ Commuter Rail Service insurance policy
23 and line or letter of credit in order that they may also secure the prior indemnities and the future
24 indemnities; now, therefore be it

25 RESOLVED, That the general assembly hereby approves and authorizes Rail Corp to
26 provide, and hereby approves and authorizes the department's support of Rail Corp and the use by
27 Rail Corp of the department's funding to provide, for the prior indemnities and the future
28 indemnities, which may include securing and maintaining an insurance policy with limits of ~~two~~
29 ~~hundred million~~ [two hundred ninety-five million](#) United States dollars ~~(\$200,000,000)~~
30 [\(\\$295,000,000\)](#), which shall provide funds to pay all or a portion of the liabilities and a line or
31 evergreen letter of credit in the amount of [up to](#) seven million five hundred thousand United States
32 dollars (\$7,500,000) issued by a bank authorized to do business in Rhode Island with a surplus of
33 not less than one hundred million United States dollars (\$100,000,000) to secure all or a portion of
34 the prior indemnities and the future indemnities or, in the alternative, to amend the ~~South County~~

1 Commuter Rail Service insurance policy and line or evergreen letter of credit to secure Rail Corp's
2 performance of the prior indemnities and the future indemnities in favor of ~~the National Railroad~~
3 ~~Passenger Corporation (Amtrak)~~ Amtrak and third-parties to the extent that Amtrak is required to
4 indemnify and defend third-parties for all claims, damages, losses, liabilities and expenses for
5 personal injury, bodily injury, death, or property damage (including, but not limited to,
6 environmental conditions and preexisting environmental conditions) and interference with the use
7 of Amtrak's property, which would not have occurred, would not have been discovered, or would
8 not have been incurred but for the existence of any platform, structure, building, road, ~~or~~ bridge or
9 appurtenance ~~thereto~~ to any of the foregoing, located or to be located on, above, under or within
10 the boundary of any property owned or controlled by Amtrak, or within the boundary of any
11 railroad safety envelope established pursuant to a federal program or safety regulations, and owned
12 or used by the State of Rhode Island, or any municipality, public corporation, or instrumentality of
13 the State of Rhode Island, or but for the activities of any employee, agent, contractor, subcontractor
14 or invitee of the state or any municipality, public corporation, or instrumentality of the state,
15 relating to any platform, structure, building, road, bridge, or appurtenance, ~~thereto located~~ to any
16 of the foregoing located or to be located on, above, under or within the boundary of any property
17 owned or controlled by Amtrak or within the boundary of any railroad safety envelope established
18 pursuant to a federal program or safety regulations, which obligations of the department include,
19 but are not limited to, the payment of any amounts arising from time to time under the retention,
20 the payment of claims, damages, losses, liabilities and expenses, and the payment of any costs and
21 fees reasonably incurred in connection with obtaining such insurance policy and line or evergreen
22 letter of credit or amending or replacing the ~~South County~~ Commuter Rail Service insurance policy
23 and line of evergreen letter of credit and to secure Rail Corp's performance of the prior indemnities
24 and future indemnities as may be authorized under the Act, as the same may be amended from time
25 to time.

26 SECTION 2. This article shall take effect upon passage.
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